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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Letter dated 6 April 1999 from the head of the delegation of the United Kingdom of Great Britain and Northern Ireland to the fifty-fifth session of the Commission on Human Rights addressed to the Chairperson of the Commission

I have the honour to refer to the report of the Special Rapporteur on the independence of judges and lawyers on his recent mission to the United Kingdom of Great Britain and Northern Ireland, which was issued on 19 March 1999.

I enclose an official response from my Government and request that it be circulated as an official document of the Commission on Human Rights.*

(Signed) Audrey GLOVER CMG
Head of the Delegation
of the United Kingdom

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* The annex is reproduced as received, in the language of submission only.

BRITISH GOVERNMENT'S RESPONSE TO REPORT BY THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

The United Kingdom fully supports the work of the UN on human rights, and the role of the Special Rapporteurs. We are grateful to the UN Special Rapporteur, Mr Cumaraswamy, for his recent report. We also welcome the written statement by the International Federation of Human Rights, which has been circulated by the UN's Commission on Human Rights.

Rosemary Nelson

While preparing this response to Mr Curamaswamy's report we received news of the dreadful murder of Rosemary Nelson by terrorists. Her death is a great loss to her family and to the legal profession; it is also an attack on the peace process. The UK Government has condemned her murder unreservedly. The attack gives an even grater focus to Mr Cumeraswamy's latest report about the intimidation of defence lawyers, but this should not be taken to suggest that the RUC had any involvement directly or indirectly in her murder.

We are forwarding the following information relating to specific points made in the Special Rapporteur's report.

Intimidation and Harassment of Defence Lawyers

The Government has read carefully the Special Rapporteur's further comments about the alleged intimidation and harassment of defence lawyers. Referring to our response to his first report the Special Rapporteur understandably comments that he could not compel witnesses to appear and record evidence. It was not the Government's intention to suggest that he could or should do so, but simply to observe that there are often allegations about events which cannot be investigated, as they undoubtedly should be, unless specific details are

forthcoming. If the Special Rapporteur had these it would have be helpful if he had passed them to us to ensure that they were looked into, or to check that they had already been examined. Furthermore, the Government intended its response to encourage those who had gone to the Special Rapporteur to take their complaints to the appropriate authorities.

It is important to note that where the Chief Constable is aware of specific complaints then he is bound, by law, to investigate them, and the Independent Commission for Police Complaints (ICPC), the civilian oversight body with significant powers, is bound to oversee the investigation. (Currently in cases involving lawyers the ICPC will supervise the investigation, which means they will approve the investigating officer, and direct the investigation.)

In the section of his previous report covering this issue the Special Rapporteur referred to three specific cases. He repeats his reference to one of them in this report. Although, understandably, he does not mention the name of the person concerned, it is a matter of public record now that it was Rosemary Nelson. This case and one of the others involved complaints against the police, and the third related to remarks allegedly made in the presence of the Deputy Commissioner for the Holding Centre at an interview. It might be helpful for the Government to comment on all three cases in turn.

a. The case where legal proceedings were brought by a solicitor for alleged assault, battery and trespass to the person by a police officer has since been before the court. It was dismissed. The judge did say that it was regrettable that the officer concerned did not handle the matter in a more professional and less arrogant way. We understand the case has been appealed and it would not be appropriate to comment further.

b. The second case concerned a number of very serious complaints by Rosemary Nelson (and others on her behalf). These complaints, covering alleged death threats, verbal and physical abuse and being struck by a police riot shield, were investigated under supervision from the Independent Commission for Police Complaints. The ICPC expressed serious concerns about the manner in which the complaints were being investigated and as a result Commander Mulvihill, a high ranking officer in the Metropolitan Police of London, was appointed by the Chief Constable to investigate the complaint. The investigation file is currently being considered by the Director of Public Prosecutions (DPP) for Northern Ireland.

The Special Rapporteur concludes that because of the calling in of the Metropolitan Police Commander, the case "...once again illustrates the lack of confidence in the RUC investigation mechanism and demonstrates further why the lawyers concerned refused to complain to the RUC". The Government does not accept this. This was the first case since its inception in 1988 on which the ICPC commented in this adverse fashion. Furthermore, as soon as they had done so, action was taken by the Chief Constable to appoint, with the approval of the Commission, a new, outside investigator. The Commission then continued to supervise the investigation of the case. The Government submits that not only are investigations invariably completed to the satisfaction of the Commission, but that where they express concerns these are acted upon.

The ICPC's own concerns which have appeared in full and have been extensively reported in the media, are indeed serious. The conduct of the investigation prior to the Commander's arrival was, however, as the ICPC statement records, included in the terms of reference for the Commander. He has reviewed the conduct of the investigation and the Government has just

received his report. The Chief Constable has asked Commander Mulvihill to publish as much of the report as would not prejudice considerations the Director of Public Prosecutions has to make. The Government is considering what action is appropriate in response to the recommendations made by Commander Mulvihill (the Chief Constable will also be considering this). It would not be appropriate to comment further until the Government has considered the review alongside the ICPC statement, and has thought through the implications. The Government undertakes to inform the Special Rapporteur of any action it, or the Chief Constable, takes.

c. The third case concerned a claim by a person being interviewed by the police at a holding centre that they said his solicitor was a "Provie bastard". Mr Cumaraswamy remarks that this was "unique and disturbing" because the Deputy Independent Commissioner for the Holding Centres was present and said he was not aware of any comment of a controversial nature or conduct that amounted to abuse. The Deputy Commissioner, however, has since publicly stated, positively and plainly, that no such remark was made during the whole interview, which he attended as an observer.

Police Ombudsman

The Special Rapporteur refers to the introduction of the new Police Ombudsman scheme. The Government will be advertising for an Ombudsman shortly, with the aim of introducing the new system later this year. It hopes this system will engender greater confidence from the public, including from lawyers. We plan to talk to the Law Society and Bar Council as the work on implementation progresses, to discuss their views on this.

One of the difficulties for the Government, police and particularly the Independent Commission for Police Complaints, under the current complaints system is that that they are not

able, save in general terms, to comment on cases that are under investigation. This has meant that the comments of others are often left unanswered. This difficulty will be addressed under the new Ombudsman arrangements, where the Ombudsman will be given greater freedom to make factual comments about cases, though within limits designed not to prejudice possible proceedings or identify complainants.

Audio/Video Recording

The Special Rapporteur's report comments on audio/video recording in the holding centres and queries the commitment and training of those who operate it. The police have a statutory Code of Practice which governs video recording and the detention, treatment, questioning and identification of terrorist suspects. A statutory Code of Practice on audio recording was circulated widely for comments and was debated in Parliament on 22 and 25 March 1999. Although the Chief Constable has already introduced it, it becomes mandatory on 24 May 1999 and it will be a disciplinary offence for a police officer to breach either of the Codes of Practice. It should also be noted that "contemporaneous" monitoring of all interviews by an Inspector, who is independent of an investigation, will continue. In addition, the facilities in the holding centres remain subject to scrutiny by the Independent Commissioner for the Holding Centres and his Deputy.

Action on Previous Recommendations

Paragraph 9 of the Special Rapporteur's report suggests the Government of the UK made no proposals for any new action to implement the recommendations of the Special Rapporteur. The Government has published a consultation paper setting out its proposals for new counter terrorism legislation and the paper (which is effectively dismissed at paragraph 13 of the report)

addresses a number of the concerns originally expressed by the Special Rapporteur and subsequently endorsed by the Committee Against Torture, including for example on 7-day detention without being brought before a court; on confession evidence; on solicitors' presence at interviews. The Government will take care when bringing forward the new legislation to ensure that it complies with its international human rights obligations and with the European Convention on Human Rights now incorporated into United Kingdom law by the Human Rights Act.

In this overall context the recent comments by the Chief Constable are also relevant. He said:

> "I have now introduced, and it's up and running, full audio recording as well as full video recording of all interviews of suspects in custody and that's happening now. I have also been in contact with the Law Society, I've met them on a number of occasions to determine what other measures might be put in place to ensure that there are mechanisms whereby any lawyers who have any complaints channel those complaints to me through the Law Society and whereby there are mechanisms in place for those complaints to be fully and thoroughly investigated. I've also invited the Law Society to be involved in the training of Detective Officers who are involved in interviews of persons in custody."

More generally, the remit of the Independent Commission on Policing, headed by Chris Patten, which was established under the Belfast Agreement of 10 April last year, includes a number of areas which are relevant to the Special Rapporteur. The Commission has been tasked to "bring forward proposals for future policing structures and arrangements, including means of encouraging widespread community support for those arrangements." Their remit specifically includes composition,

recruitment, training, culture ethos and symbols. Their proposals should be designed to ensure that the police are seen to operate within a clear framework of accountability to the law and community they serve. We will arrange for the Special Rapporteur to get a copy of the Patten Commission's report, which is due to be published this summer.

Patrick Finucane's Murder

The Government is currently considering a number of representations about this case.

The first point the Government would like to make in response to Mr Cumaraswamy is that the Patrick Finucane case was considered not only by the criminal investigation into the murder but also in great detail by John Stevens as part of his wider inquiry into allegations of collusion between the security forces and terrorists. A summary only of his report was published in April 1990. Mr Stevens' report led to 44 persons being convicted of various offences. The Special Rapporteur expresses his concern as to whether there was collusion between the "military and/or RUC" and terrorists. He sees this view as fortified by the refusal to make public even the summary of a second report by John Stevens which came about after the Brian Nelson case.

John Stevens did find individual acts of collusion. What he said, to quote from the published summary, was that the analysis of the evidence "....makes it clear that the passing of information to paramilitaries by security force members has been restricted to a small number of individuals. It is neither widespread nor institutionalised". No police officers were charged.

The then Chief Constable, as a result of a television programme "Dirty War" on 3 June 1992, presented by Mr John

Ware, asked Mr Stevens to examine the matters raised in it. Mr Stevens' second report was considered by the Director of Public Prosecutions for Northern Ireland, who is independent of the police and Government, and he concluded that no further prosecutions should be brought.

Neither the report, nor a summary, was published because it was a follow-up report.

It is worth recording that the Patten Commission has been given access, in confidence, to the Stevens report, and to the Stalker/Sampson report as part of their work.

The Special Rapporteur comments on his exchange with the Chief Constable, Sir Ronnie Flanagan, during his mission to prepare his first report. The Special Rapporteur queries why the Chief Constable is reported to have divulged at least part of the Stevens report to a newspaper when it was highly classified. The Chief Constable has made no such disclosures. This exchange may have been referring back to the conclusion in the published summary. In addition, the comments by John Stevens that members of the Ulster Defence Regiment were involved is not a "revelation" as Mr Cumaraswamy suggests; it was already public knowledge that these soldiers had been prosecuted.

The Special Rapporteur raises the question of an inquiry into the death of Patrick Finucane. This case remains open. The Secretary of State met Patrick Finucane's widow Geraldine on 12 February 1999, and took receipt of alleged new evidence into the murder, which is being examined thoroughly.

Communication to Government

The position on the investigations surrounding the arrests of the three individuals mentioned in paragraph 13, Carraher, Dines and McGinn, is that a file is currently being considered by the Director of Public Prosecutions.

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